

## SECTION VI.

### Construction Prime Contracts

Even though many small contractors and MBE/WBEs perform both subcontracts and prime contracts, and certain requirements such as construction licenses pertain to both sets of work, other barriers may apply when competing for prime contracts. Appendix F presents information indicating that a relatively small share of transportation construction firms compete for Caltrans prime contracts, and that this share is even smaller for minority- and women-owned firms. This section examines both qualitative and quantitative information related to construction prime contracting.

#### **Qualitative Information on Prime Contracting in the Transportation Construction Industry**

Based on public hearing testimony and interviews with minority and female business owners and trade association representatives, the study team identified several possible barriers to participation as prime contractors for transportation work.

**Size of contracts.** A number of contractors reported that Caltrans prime contracts are “extremely large.” Even though these contractors work as a prime on smaller Caltrans projects and for other public and private sector clients, they must work as a subcontractor on the large Caltrans projects. One minority contractor said that the biggest problem with securing Caltrans work was that the agency failed to segment projects into small enough pieces for small and minority-owned businesses to compete for them.

Many of the firm owners who identified the size of contracts as a barrier to participation as a prime contractor, expressed concern that Caltrans avoided breaking-up contracts because the department preferred working with larger firms. One firm owner stated that larger firms are not held to the same standards as small firms “from the bid process on down to building.”

**Bonding.** A number of contractors (MBE/WBE and majority-owned) reported that bonding is a major barrier to bidding on public work, including Caltrans projects. By state law, Caltrans is required to have bonding on construction contracts over \$35,000.

One white male interviewee said that, because companies are required to bond their work in the public sector, he avoids public work. A minority contractor said that he does not work as a prime in the public sector because he cannot afford to bond his work. Another contractor said that he tried to work with Caltrans, but “when you are a small contractor, you can’t really do it.” Bonding was difficult for him. For some interviewees, Caltrans was closed to all but the largest contractors because of the bonding requirements. Among both prime contracting and subcontracting construction firms, many reported confusion about the bonding requirements placed upon subcontractors to Caltrans projects.

Very few firms reported difficulties in obtaining financing or bonding specifically due to their race, ethnicity or gender.

**Other contract requirements and provisions.** Insurance requirements and liquidated damages provisions can present barriers to bidding on Caltrans contracts. Several contractors reported that insurance requirements presented a barrier to bidding on Caltrans contracts. A trade association representative reported that recent changes to the insurance requirements increased the insurance premiums of several prime-contracting members by as much as 50 percent. Several contractors mentioned that insurance costs are a barrier to bidding on Caltrans work. In addition to costs, several firms reported that they were unable to obtain the level of insurance required for project elements and equipment. One prime contractor said that sometimes he can't bid on Caltrans work because the liquidated damaged provisions are excessive.

**Paperwork and "red tape."** Several contractors complained of a confusing, laborious process of bidding on Caltrans work. Some firms reported that the administrative burden discouraged them from bidding on Caltrans contracts. Several firms with past bid experience said that the Caltrans process is particularly difficult when compared with that of other public sector clients. Many firms complained of excessive paperwork.

**Prevailing wage.** Some interviewees reported difficulty complying with public sector rules and regulations including prevailing wage and certified payroll. Hiring union labor is also a barrier for some contractors.

**Information on potential bids.** As discussed in Section V, Caltrans construction contracts are well advertised and readily accessible on its website. Some contractors receive e-mail notification of Caltrans jobs. Some firms report that public sector jobs are better publicized than private sector jobs.

There was some feedback that the descriptions of Caltrans projects could be more detailed so firms would know whether or not to look more closely at the RFBs.

Several interviewees said that it was difficult to get questions answered over the phone at Caltrans. One business owner reported that the phone system was difficult to navigate. Another said that he tries to call for information, but no one ever gets back to him.

Other contractors (MBE/WBE and majority-owned) were unfamiliar with the Caltrans bidding process. Some indicated that they would like to work for Caltrans but they did not know how to go about doing so. Some believed that they should be notified about Caltrans jobs, and interpreted the fact that they had not as being denied the opportunity to bid work for Caltrans.

**Payment.** Some contractors report that they prefer to perform public sector contracts because they know they will be paid. Others complain about the waiting time for payments on public sector projects. One contractor said Caltrans was worse than the private sector and some firms complained specifically about slow pay by Caltrans. Another contractor specifically mentioned slow pay on Caltrans change orders.

Several contractors said there were problems with reimbursement for specific items of work on Caltrans projects. Some small business owners were affected by reported difficulty in receiving interim payment for long projects.

## MBE/WBE Utilization as Prime Contractors

BBC examined utilization of minority- and women-owned firms as prime contractors on Caltrans and Local Assistance construction contracts. Analysis of dollars of utilization is based on dollars that appeared to be retained by the prime after BBC subtracted dollar amounts for each subcontractor identified for the project.

A number of people interviewed in this study said that they knew of very few DBEs working as prime contractors in the public sector, and several said they knew of none working as a prime for Caltrans. A number of minority and female prime contractors were interviewed as part of this study or testified at public hearings, however. BBC identified a few MBE/WBEs and certified DBEs working as prime contractors on Caltrans construction projects. However, relative to utilization on construction subcontracts (see Section V), minority- and woman-owned firms receive a far smaller share of Caltrans and Local Assistance prime contractor dollars.

**Federally-funded and state-funded prime contracts.** BBC analyzed utilization in dollars going to prime contractors for 831 federally-funded and 874 state-funded Caltrans, Local Assistance and SR 125 projects. In general, federally-funded projects were let with DBE contract goals, while those without federal funds did not specify any DBE goals.

As shown in Figure VI-1, MBE/WBEs received 4 percent of prime contract dollars on federally funded contracts for 2002 through April 2006. Among state-funded contracts, 7 percent of prime contract dollars were awarded to minority- and woman-owned firms. For both federally- and state-funded prime contracts, MBE/WBEs that were not DBE certified accounted for more contract dollars than firms certified as DBEs.

**Figure VI-1.**  
**MBE/WBE share of prime contract**  
**dollars for federally- and state-funded**  
**transportation construction contracts**

**Note:**

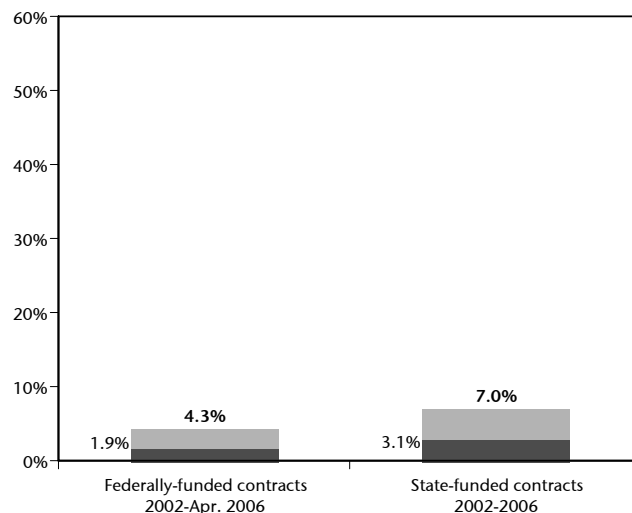
Statistics above each bar is total MBE/WBE utilization. Certified DBE utilization is noted in the bottom portion of each bar. The difference is utilization of MBE/WBEs that were not DBE certified.

For more detail and for results by MBE/WBE group, see Figures E-105 and E-71 in Appendix E.

Number of prime contracts analyzed is 831 for 2002-April 2006 federally-funded contracts and 874 for state-funded contracts.

**Source:**

BBC Research and Consulting from contract data on Caltrans, Local Assistance and SR 125 contracts.



**Federally-funded prime contracts before and after May 1, 2006.** BBC also analyzed MBE/WBE participation as prime contractors on 35 federally-funded contracts for May through December 2006 based on the information collected from Caltrans and local agencies. MBE/WBEs were awarded about 10 percent of prime contract dollars for this time period.

Note that the very small number of contracts for May through December 2006 limits any interpretation of this greater MBE/WBE participation as prime contractors.

**Figure VI-2.**  
**MBE/WBE share of prime contract dollars for federally-funded transportation construction contracts, before and after May 1, 2006**

Note:

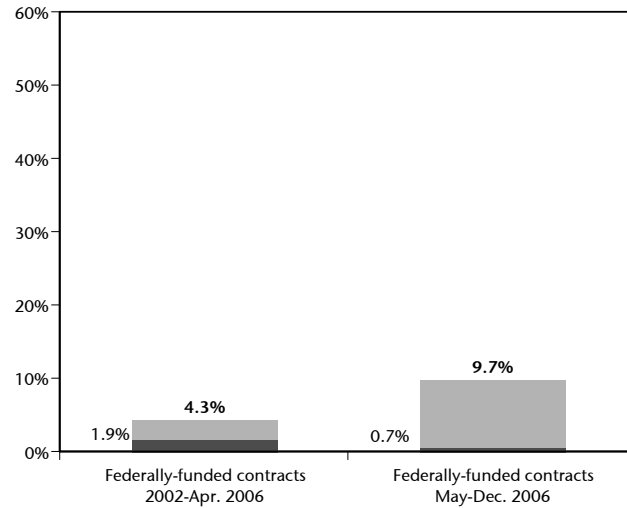
Statistics above each bar is total MBE/WBE utilization. Certified DBE utilization is noted in the bottom portion of each bar. The difference is utilization of MBE/WBEs that were not DBE certified.

For more detail and for results by MBE/WBE group, see Figures E-105 and E-106 in Appendix E.

Number of prime contracts analyzed is 831 for 2002-April 2006 and 35 for May-December 2006.

Source:

BBC Research and Consulting from contract data on Caltrans, Local Assistance and SR 125 contracts.



**Utilization of firms by race and gender group.** As with construction subcontracts, Hispanic American-owned firms and white women-owned firms accounted for the largest portion of MBE/WBE prime contract dollars. As shown in Figure VI-3 on the following page, this was true for both federally-funded contracts and state-funded contracts. Of the 35 federally-funded contracts analyzed for May through December 2006, two were awarded to WBEs and three were awarded to Hispanic-owned firms.

**Figure VI-3.**  
**DBE and MBE/WBE share of prime contract dollars for transportation construction**  
**contracts, by race/ethnicity/gender**

	Federally-funded contracts		State-funded contracts 2002–2006
	2002–Apr. 2006	May–Dec. 2006	
<b>MBE/WBEs</b>			
African American-owned	0.4%	0.0%	0.2%
Asian-Pacific American-owned	0.1	0.0	0.4
Subcontinent Asian American-owned	0.3	0.0	0.2
Hispanic American-owned	1.2	7.4	4.2
Native American-owned	<u>0.3</u>	<u>0.0</u>	<u>0.6</u>
<b>Total MBE</b>	<b>2.2%</b>	<b>7.4%</b>	<b>5.6%</b>
WBE (white women-owned)	<u>2.1</u>	<u>2.3</u>	<u>1.4</u>
<b>Total MBE/WBE</b>	<b>4.3%</b>	<b>9.7%</b>	<b>7.0%</b>
<b>DBEs</b>			
African American-owned	0.4%	0.0%	0.1%
Asian-Pacific American-owned	0.1	0.0	0.2
Subcontinent Asian American-owned	0.0	0.0	0.2
Hispanic American-owned	1.0	0.7	1.9
Native American-owned	<u>0.3</u>	<u>0.0</u>	<u>0.5</u>
<b>Total MBE</b>	<b>1.9%</b>	<b>0.7%</b>	<b>2.9%</b>
WBE (white women-owned)	0.0	0.0	0.1
White male-owned DBE	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
<b>Total DBE</b>	<b>1.9%</b>	<b>0.7%</b>	<b>3.1%</b>

Note: Numbers rounded to nearest tenth of 1 percent.

For more detail, see Figures E-105, E-106, and E-71 in Appendix E.

Number of prime contracts analyzed is 831 for 2002-April 2006 and 35 for May-December 2006 federally-funded contracts and 874 for state-funded contracts.

Source: BBC Research and Consulting from contract data on Caltrans, Local Assistance and SR 125 contracts.

## Disparity Analysis

There is clear evidence of substantial disparities between the utilization and availability of MBE/WBEs for the prime contracts examined in this study.

**Federally-funded and state-funded prime contracts.** Figure VI-4 reports disparity indexes by WBE/MBE group for federally- and state-funded prime contracts (Caltrans, Local Assistance and SR 125 construction projects). With the exception of firms owned and controlled by Subcontinent Asian Americans, minority- and woman-owned businesses are underutilized as prime contractors. Disparities were most severe for African American- and Asian-Pacific American-owned firms.

Utilization of Subcontinent Asian American-owned firms exceeded what would be expected from availability for both federally- and state-funded prime contracts.

**Figure VI-4.**  
**Disparity indices for**  
**MBE/WBE utilization on**  
**federally- and state- funded**  
**transportation construction**  
**prime contracts, 2002-April**  
**2006 and 2002-2006**

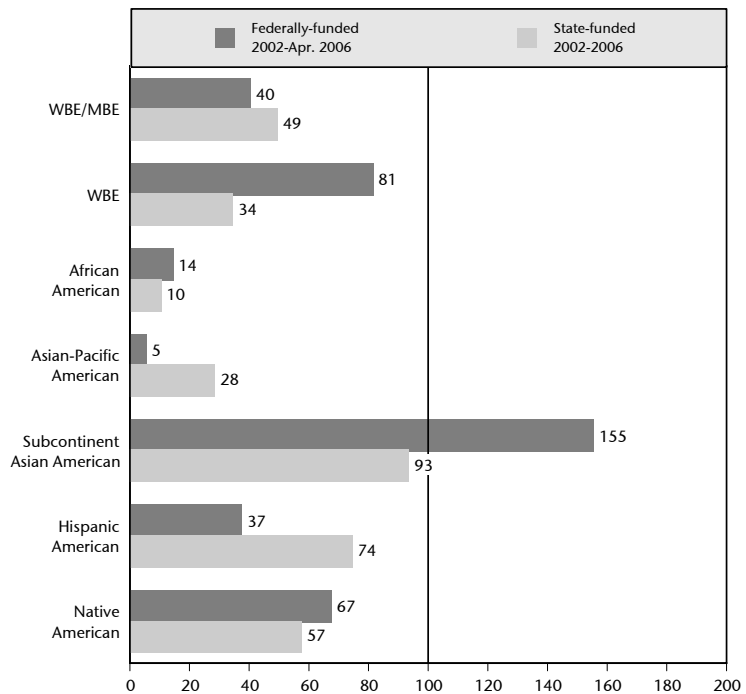
Note:

Includes Caltrans, Local Assistance and SR 125 contracts. For more detailed information, see Figure E-105 and Figure E-71 in Appendix E.

Number of prime contracts analyzed is 831 for 2002-April 2006 federally-funded contracts and 874 for state-funded contracts.

Source:

BBC Research and Consulting.



**Federally-funded prime contracts before and after May 1, 2006.** Because of the two prime contracts to WBEs and three prime contracts to Hispanic American-owned firms after May 1, 2006, overall MBE/WBE utilization as prime contractors on federally-funded contracts was in line with what would be expected based on overall MBE/WBE availability for these contracts.

Again, BBC cautions against drawing conclusions from the overall results for the 35 federally-funded prime contracts examined for May through December 2006 and for any results for specific MBE/WBE groups.

**Figure VI-5.**  
**Disparity indices for**  
**MBE/WBE utilization on**  
**federally-funded**  
**transportation construction**  
**prime contracts, 2002-April**  
**2006 and May-Dec. 2006**

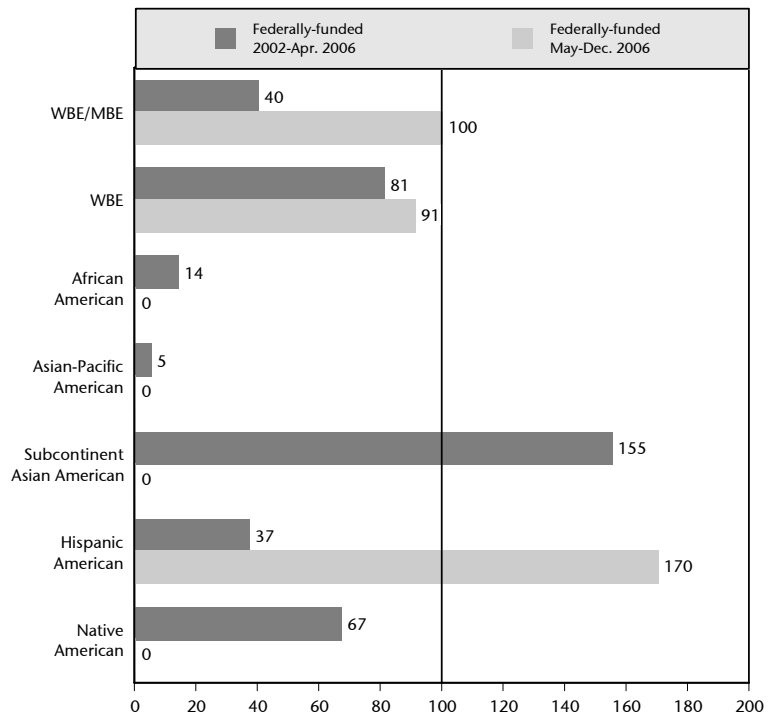
Note:

Includes Caltrans, Local Assistance and SR 125 contracts. For more detailed information, see Figure E-105 and Figure E-106 in Appendix E.

Number of prime contracts analyzed is 831 for 2002-April 2006 contracts and 35 for May-December 2006 contracts.

Source:

BBC Research and Consulting.



## Results for Small Construction Prime Contracts

BBC further explored the effect of contract size on MBE/WBE participation by examining contracts under \$10 million. Of the 1,527 Caltrans construction contracts analyzed, 93 were for amounts greater than \$10 million. The remaining 1,434 contracts represented 36 percent of all Caltrans construction dollars awarded during the study period.

Overall, MBE/WBEs were awarded 6 percent of prime contract dollars for federally-funded construction contracts under \$10 million. MBE/WBEs received 11 percent of prime contract dollars on state-funded contracts \$10 million.

Even though the relative utilization of MBE/WBEs is higher, the level one would expect based on availability of MBE/WBEs for prime contracts of this size is also greater. Figure VI-6 presents the disparity indexes for this subset of prime contracts, which are, with small exceptions, comparable to those in Figure VI-4. Contract size, or at least examining contracts below \$10 million, fails to explain the overall disparities for construction prime contracts.

**Figure VI-6.**  
**Disparity indices for**  
**MBE/WBE utilization on small**  
**federally- and state- funded**  
**transportation construction**  
**prime contracts, 2002-April**  
**2006 and May-Dec. 2006**

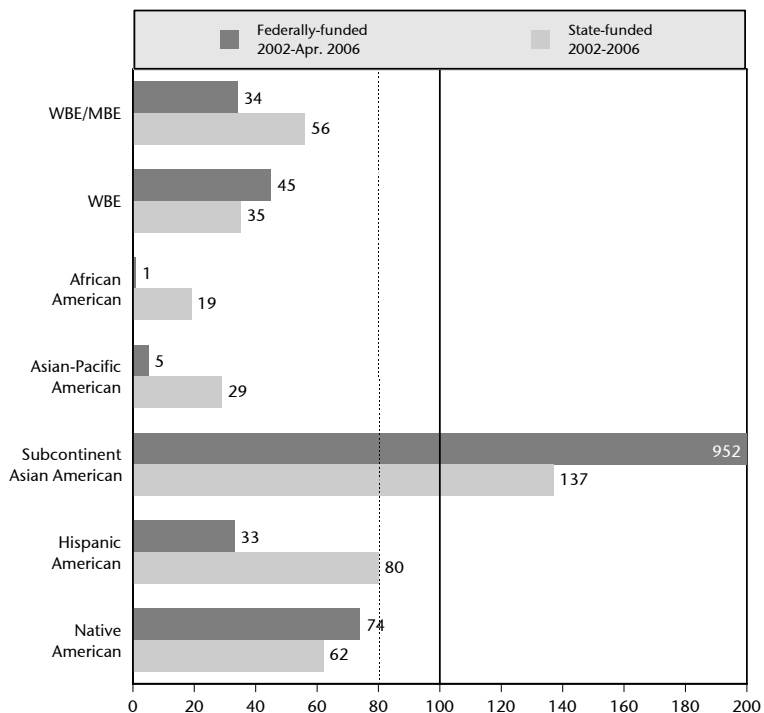
Note:

Includes Caltrans, Local Assistance and SR 125 contracts. For more detailed information, see Figure E- 114 and Figure E-115 in Appendix E.

Number of prime contracts analyzed is 734 for federally-funded 2002-April 2006 contracts; and 857 for state-funded 2002-2006 contracts.

Source:

BBC Research and Consulting.



## Participation of MBE/WBEs in the Private Sector

As reported in Appendix F, transportation construction firms in all ownership categories, except for African American-owned firms, were more likely to report bidding in the private sector than for Caltrans projects. The total percentage of MBE/WBEs among all bidders to Caltrans projects is roughly equivalent to the MBE/WBE share of bidders to private sector transportation projects.

Private sector bid participation varies considerably across MBE/WBEs groups. Subcontinent Asian-American- (19 percent), majority- (17 percent) and women-owned (15 percent) firms are most likely to report bids as primes to private sector transportation construction work during the past five years. Slightly smaller percentages of Native American-, Asian-Pacific American- and Hispanic American-owned firms (roughly 10 percent of each group) report bidding as primes to private sector projects. Only 4 percent of African American-owned firms said that they had bid for private sector work as primes during the past five years.

Some minority and female business owners report success as prime contractors in the private sector. They report that private sector work is preferable because it is less price-driven and avoids the bureaucracy of public sector work. Private sector projects may be unbundled into smaller jobs that are more accessible for small businesses.

Other minority and female business owners say that they are not successful pursuing private sector work. One woman attributed her lack of success to developers and other companies using firms that they have worked with for a long time, having “no incentive ... to switch.” Some business owners report that they only do public sector work because they are union contractors, and it is difficult to compete on price with non-union firms in the private sector.